

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of LEVEL 3 COMMUNICATIONS, LLC (U-5941-C) for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms and Conditions of Interconnection with SBC Bell Telephone Company dba SBC California and SBC Communications.

Application 04-06-004
(Filed June 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
RESOLVING PENDING MOTIONS**

This ruling resolves the following pending motions in this proceeding:
(1) Level 3 Communications, LLC's (Level 3) December 9, 2004, motion to replace Appendix A of the revised matrix of disputed interconnection issues submitted on November 12, 2004; (2) Level 3's motion for official notice of the December 10, 2004, recommended decision of the arbitration panel in the Level 3-Pacific Bell Telephone Company (SBC) arbitration before the Michigan Public Services Commission; and (3) Level 3's November 17, 2004, motion to file confidential materials under seal.

I. Motion to Replace Appendix A of the Revised Matrix of Disputed Interconnection Issues

Pursuant to my ruling on November 8, 2004, Level 3 and SBC jointly filed a Revised Matrix of Disputed Issues to reflect issues that the parties had settled since the filing of the earlier version of the matrix. By motion filed December 9, 2004, Level 3 moves to replace this Revised Matrix to reflect modifications it

wishes to make to its proposed, disputed contract language. Level 3's motion is denied.

My November 8, 2004, ruling did not contemplate or permit the parties to submit revised proposed, disputed contract language. Level 3's request nevertheless to introduce additional proposed, disputed contract language into the record for the Commission's consideration is untimely, coming as it does after the conclusion of hearings and the submission of briefs.

Level 3 contends it is to be expected that parties' positions may evolve during the proceeding given that they are contemporaneously involved in on-going negotiations, and that it is only reasonable to provide the Commission with the status of the parties' positions. I concur to a point, which Level 3 has exceeded. It is reasonable for parties to present their modified positions after the close of evidentiary hearings when that modified position can be evaluated with reference to the evidentiary record or is reasonably within the scope of the positions presented on the record. Instead, Level 3's modified proposed, disputed contract language bears no relationship to any previous discussion of this issue, and instead appears to represent a more stringent proposal outside of the scope of the proposals in the record. As a result, it would be unduly prejudicial to SBC, who is foreclosed from testing the proposed, disputed language in evidentiary hearings and from addressing it in briefs, and unduly burdensome to this arbitrator to attempt to discern the rationale behind and relative merits of the new proposed language, without the benefit of exploration in evidentiary hearings or in briefs, and at this late stage of the proceeding.

II. Motion for Official Notice of the Recommended Decision of the Michigan Public Service Commission's Arbitration Panel

By motion filed December 13, 2004, Level 3 moves for official notice of the December 10, 2004 recommended decision of the Michigan Public Service

Commission's arbitration panel on the Level 3-SBC arbitration in that state. I deny that motion. The document is not an adopted position of the Michigan Public Services Commission and its findings have no official weight.

III. Motion to File Confidential Materials Under Seal

By motion filed November 17, 2004, Level 3 asks leave to file confidential materials, ordered by the administrative law judge to be filed as late-filed Exhibit SBC-13, under seal. Level 3's motion is granted.

IT IS SO RULED.

Dated December 21, 2004, at San Francisco, California.

/s/ HALLIE YACKNIN

Hallie Yacknin
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Resolving Pending Motions on all parties of record in this proceeding or their attorneys of record.

Dated December 21, 2004, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.